

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

Dan Goedken
Delaware County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2012-AFO-08

TO: Dan Goedken
3225 160th Street
New Vienna, Iowa 62065

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Dan Goedken for the purpose of resolving environmental violations relating to a manure discharge that resulted in a fish kill in Bear Creek in Delaware County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Chad Kehrl, Field Office 1
Iowa Department of Natural Resources
909 West Main, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess

RECEIVED

MAR 07 2012

IDNR AIR QUALITY

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DAN GOEDKEN

administrative penalties. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

1. Dan Goedken owns and operates a livestock operation located at 3225 160th Street; New Vienna, Iowa (SW 1/4, Section 35, Colony Township, Delaware County, Iowa). The operation has a 250 head open cattle feedlot as well as a swine confinement building with approximately 350 head of finishers. The manure from the confinement building is stored in a rectangular formed manure storage structure adjacent to the building. The confinement building and the manure storage structure are located approximately 200 yards upgrate of Bear Creek.

2. On October 25, 2011, Mr. Goedken was land applying liquid manure from his facility. During this time, Mr. Goedken forgot to turn off the valve from the manure transfer pump that top loads manure into his liquid spreader. Upon returning from the field, Mr. Goedken realized that the valve had been left open and manure had discharged from the facility. Mr. Goedken immediately turned off the valve to stop the discharge. He also constructed an earthen dike adjacent to Bear Creek to minimize the discharge to the creek. He reported the spill to the DNR. Mr. Goedken stated that the event occurred at approximately 7:45 a.m. and he estimated that between 2,000 and 5,000 gallons of liquid manure had been discharged.

3. In response to the spill, Rick Martens and Chad Kehrli, DNR Field Office 1 environmental specialists, observed the water in Bear Creek at the C64 bridge, just below Mr. Goedken's facility at approximately 9:45 a.m. The water had a slight manure odor and was turbid. They observed dead fish. The field test indicated an ammonia concentration of greater than 3.0 mg/L. The laboratory sample indicated an ammonia nitrogen concentration of 6.8 mg/L and a chemical oxygen demand concentration of 89 mg/L.

4. Mr. Martens and Mr. Kehrli continued to Mr. Goedken's facility where they met with Mr. Goedken. They noted the manure pit and the overland flow of the manure from the pit into Bear Creek. They also observed the earthen dike that Mr. Goedken had constructed. Mr. Kehrli collected three laboratory samples in this area. The first sample was collected approximately 130 feet upstream of the discharge into Bear Creek. The water at this location was clear and no live or dead fish were observed. The field test indicated an ammonia concentration of less than 1.0 mg/L. The laboratory sample indicated an ammonia nitrogen concentration of 0.18 mg/L and a chemical oxygen demand concentration of 14 mg/L. The second sample was collected at the discharge entry point into Bear Creek. The water was discolored and the field test indicated an ammonia concentration of greater than 3.0 mg/L. No live or dead fish were observed. The laboratory sample indicated an ammonia nitrogen concentration of 1,100 mg/L and a chemical oxygen demand concentration of 23,000 mg/L. The third sample was taken from the swine manure trapped behind

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DAN GOEDKEN

the earthen dike. The liquid was discolored and had a manure odor. The laboratory sample indicated an ammonia nitrogen concentration of 3,600 mg/L and a chemical oxygen demand of 47,000 mg/L. Mr. Goedken agreed to remove the manure from the dike area and properly land-apply it.

5. After meeting with Mr. Goedken, Mr. Martens and Mr. Kehrli met with DNR Fisheries Bureau personnel. The group proceeded approximately 2 ¼ miles downstream to the 182nd Street bridge. The water was clear, with no odor, and the field test indicated an ammonia concentration of less than 1.0 mg/L. No live or dead fish were observed. Mr. Martens and Mr. Kehrli went upstream and accessed Bear Creek on private property off of 172nd Street. This location was approximately 1 ¼ mile downstream of the manure discharge. The water was clear, with no odor, and the field test indicated an ammonia concentration of less than 1.0 mg/L. No live or dead fish were observed.

6. DNR's Fisheries Bureau conducted a fish kill assessment on October 25 and 26, 2011 of the impacted areas of Bear Creek. The fish kill investigation was led by Dan Kirby who was assisted by Mark Winn, Steve Pecinovsky, and Greg Gelwicks. The fish kill assessment began on October 25, 2011 and continued to October 26, 2011 because the Fisheries Bureau personnel determined that the fish kill event was ongoing on October 25, 2011. The fish kill assessment determined that 2,544 fish were killed, valued at \$846.05. The Fisheries Bureau investigative costs were \$623.28 and the Field Office investigative costs were \$676.04 for total DNR investigative costs of \$1,299.32.

7. On November 17, 2011, Mr. Goedken was issued a Notice of Violation letter for the water quality violations discovered during the October 2011 investigation.

CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. DNR Field Office 1's investigation determined that manure from Mr. Goedken's facility was discharged into Bear Creek. The above-mentioned facts indicate violations of these provisions.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DAN GOEDKEN

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants and the water was discolored with a manure odor. Additionally, a fish kill resulted from the manure discharge. The above mentioned facts indicate violations of the general water quality criteria.

4. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge from Mr. Goedken's facility.

V. ORDER

THEREFORE, the DNR orders and Dan Goedken agrees to do the following:

1. Dan Goedken shall pay fish restitution in the amount of \$643.05 and investigative costs in the amount of \$1,299.32 within 30 days of the date the Director signs this administrative consent order; and
2. Dan Goedken shall pay an administrative penalty in the amount of \$500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$500.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Goedken did not obtain an economic benefit as a result of the manure discharge. Therefore, no economic benefit is being assessed.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DAN GOEDKEN

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 1 documented a manure discharge that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with the animal feeding operation is required of all persons in this state. Therefore, \$400.00 is assessed for this factor.

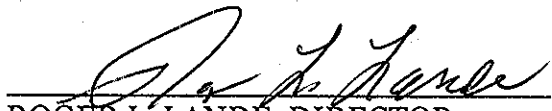
Culpability – Mr. Goedken has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Goedken did take immediate actions to stop and prevent more manure from being discharged to Bear Creek. His immediate actions likely reduced the damage to Bear Creek and likely reduced the number of fish killed. Because of Mr. Goedken's immediate action, culpability for Mr. Goedken is greatly reduced. Therefore, \$100.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Dan Goedken. For that reason Dan Goedken waives the right to appeal this administrative consent order or any part thereof.

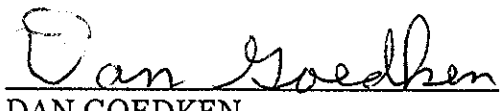
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 14th day of
March, 2012.



DAN GOEDKEN

Dated this 2 day of
March, 2012.

Kelli Book, Field Office 1, EPA, VIII.D.1 a and VIII.D.3 a